



May 23, 2001

Mr. C. David Richards, III
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-2127

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147580.

The Texas Board of Examiners of Professional Counselors (the "board") received requests for all information relating to complaints filed by the requestor against two licensed counselors, including evidence supporting the board's findings. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ The requestor has also provided this office with comments. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Seventy-Sixth Legislature amended article 4512g, V.T.C.S., to provide for the confidentiality of "[a]ll information and materials subpoenaed or compiled by the board in connection with a complaint or investigation."² Act

¹In the context of arguing that the requested information is confidential, you raise section 552.103, the litigation exception, as an exception to the disclosure of the requested information. Assuming you intended to assert the litigation exception, you have not provided this office with written statements explaining why section 552.103 applies. Therefore, we do not address whether the requested information is excepted under section 552.103. *See* Gov't Code § 552.301, .302.

²The same legislature repealed article 4512g and codified it in section 503.254 of the Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6(a), 1999 Tex. Gen. Laws 1431, 2439. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature that enacted the code, the amendment of article 4512g, V.T.C.S., is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c).

of May 30, 1999, 76th Leg., R.S., ch. 1444, § 5, sec. 16D(h), 1999 Tex. Gen. Laws 4899, 4902. Nevertheless, the legislature also provided that the board may disclose this information to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional counselor licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

Id. The legislature further provided in article 4512g, section 16D(i) of the Texas Revised Civil Statutes that “[t]he filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with” the Public Information Act. *Id.*

It appears you have released information to the requestor in accordance with article 4512g, section 16D(i) of the Texas Revised Civil Statutes. However, you indicate that the remainder of the requested information, which you have submitted, is confidential because it was compiled by the board as a result of the complaints filed by the requestor. Based on your representation and our review of the submitted information, we agree that the submitted information is confidential under article 4512g, section 16D(h) of the Texas Revised Civil Statutes. You further indicate that none of the exceptions allowing for the disclosure of the confidential information applies to the instant requestor. Therefore, we find that you must withhold the submitted information under section 552.101 of the Government Code in conjunction with article 4512g, section 16D(h) of the Texas Revised Civil Statutes.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 147580

Encl: Submitted documents

cc: Dr. Wayne Whitted, MD, MPH
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(w/o enclosures)